

SC11645ZP

REMARKS

Claims 1-13 and 17-20 are pending. Claims 6, 12, 14-16 and 19 are cancelled without prejudice. Claim 1, 7, 9, 13, 17 and 20 are herein amended, no other amendments are made. Applicants submit that the amendments do not add new material to the current Application. No amendment made is related to the statutory requirements of patentability unless expressly stated herein. No amendment made is for the purpose of narrowing the scope of any claims, unless Applicants argue herein that such amendment is made to distinguish over a particular reference or combination of references.

Applicants respectfully submit that claims 1-13 and 17-20 are patentable over Hsu (US 6,768,403) in view of Lin (US 6,818,936) under 35 U.S.C. 103(a). Hsu and Lin together fails to teach or suggest all features of independent claims 1, 9, and 17 and their dependencies (claims 2-8, 10-13, and 18-20). For example, Hsu and Lin fail to teach or suggest forming a dielectric layer or silicon oxynitride at a temperature between approximately 200 and 300 degrees Celsius. The Examiner contends that although Hsu and Lin, together or alone, fail to teach this feature that it would have been obvious to one having ordinary skill in the art at the time of the invention to form a dielectric or silicon oxynitride at a temperature within this range. Applicants disagree. The Examiner cites *In re Aller*, 105 USPQ 233, 235 (CCPA 1955) to support the argument. More specifically, the Examiner states, “[I]t has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.” While the Examiner is correct as to what the case law states, the case law is being improperly applied here.

In *In re Aller* a claim stating a that a process was performed at a temperature between 40°C and 80°C and an acid concentration between 25% and 70% was found to be obvious over prior art that taught doing the same process at a temperature of 100°C and an acid concentration of 10%. Thus, in *In re Aller*, the prior art was not silent as to any temperature or acid concentration condition.

As the Examiner correctly points out, the case law states that the general conditions must be disclosed in the prior art. However, both Hsu and Lin are silent as to any temperature condition. Therefore, Hsu and Lin fail to disclose the general condition. The case only applies if the prior art disclosed the general condition of a claim.

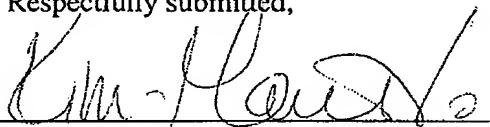
Since here the prior art fails to disclose any general condition, *In re Aller* cannot be applied. Therefore, Hsu and Lin, together or alone, cannot suggest the temperature range stated in Applicants' independent claims. For this reason, Hsu and Lin, together or alone, a *prima facie* case of obviousness has not been made. Thus, all pending claims are patentable over Hsu and Lin under U.S.C. 103(a).

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Although Applicants may disagree with additional statements made by the Examiner in reference to the claims and the cited references, Applicants are not discussing all these statements in the current Office Action since reasons for the patentability of each pending claim is provided without addressing these statements. Therefore, Applicants reserve the right to address these statements at a later time, if necessary.

Applicants earnestly solicit allowance of all pending claims. Please contact Applicants' practitioner listed below if there are any issues.

Respectfully submitted,

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